Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Conference	)	WC Docket No. 02-269
On Accounting Issues	)	
	)	
2000 Biennial Regulatory Review -	)	CC Docket No. 00-199
Comprehensive Review of the Accounting	)	
Requirements and ARMIS Reporting	)	
Requirements for Incumbent Local	)	
Exchange Carriers: Phase II	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301

REPLY OF QWEST

Qwest Corporation ("Qwest") replies to comments filed January 30, 2004 in the above-captioned proceedings addressing the recommendations of the Federal-State Joint Conference on Accounting Issues ("Joint Conference").

The parties commenting on the Federal Communications Commission's ("Commission" or "FCC") *Notice* and the Joint Conference's recommendations fell into three groups: 1) large incumbent local exchange carriers ("ILECs")[1]; 2) large interexchange carriers ("IXCs")[2]; and 3) state regulatory agencies and related organizations.[3] None of the parties advocating adoption of the Joint Conference's recommendations -- which would expand the Commission's existing accounting and reporting requirements -- provide anything more than a superficial justification as

[1] Verizon, BellSouth Corporation ("BellSouth"), Qwest, SBC Communications Inc. ("SBC") and United States Telecom Association ("USTA").

[2] AT&T Corp. ("AT&T") and Sprint Corporation ("Sprint").

[3] Wisconsin Public Service Commission ("Wisconsin PSC"), the National Association of State Utility Consumer Advocates ("NASUCA"), and Rural Utilities Service ("RUS").

to how these proposed regulations would satisfy the "necessary" test contained in Section 11(b) of the 1996 Act (or "the Act"). Such rhetoric cannot turn a state need into a federal need, nor can it turn a "useful" federal accounting regulation into a "necessary" regulation. Therefore, the Commission should reject the Joint Conference's recommendations, act expeditiously on outstanding petitions for reconsideration, and open a new proceeding at the earliest possible date to eliminate "unnecessary" accounting and reporting requirements, as is required by Section 11 of the 1996 Act.

I. INTRODUCTION AND SUMMARY

While the positions of the commenting parties were fairly predictable, what was striking was the lack of participation by state regulatory agencies[4] -- the very parties claiming to "need" the information generated by the Commission's accounting and reporting requirements. Only a single state regulatory agency, the Wisconsin PSC, filed comments in the opening round of this proceeding. The other 49 remained silent -- hardly a high level of support for the Joint Conference's claim that the states "need" federal accounting information.[5]

As expected, the large IXCs filing comments, AT&T and Sprint, largely supported the Joint Conference's recommendations that would further burden the large ILECs.[6] AT&T, not being subject to any of these accounting and reporting requirements, was by far the strongest

[4] Qwest acknowledges that a number of state commissioners and staff members participated in preparing the Joint Conference Report.

[5] It should be noted that the Wisconsin PSC's comments in support of the Joint Conference recommendations are very measured. The Wisconsin PSC acknowledges that it "could establish different accounts/subaccounts or definitions than the FCC" and that it could also obtain information from informal reports or require ILECs to retain certain information for up to six years. *See* Wisconsin PSC at 5. The Wisconsin PSC's acknowledgements basically demonstrate that the Commission's accounting and reporting requirements are not "necessary" for Wisconsin state regulatory purposes.

[6] MCI did not file comments.

proponent of increasing the burdens on the large ILECs. Sprint on the other hand -- having a "mid-size" ILEC operation in addition to being a large IXC -- was very careful to support only those accounting and reporting requirements that would apply to large ILECs while opposing the Joint Conference's recommendations on affiliate transactions that would apply equally to Sprint and its affiliates.

Most of the commenters supporting the Joint Conference's recommendations ignore the Commission's earlier findings and assert that the Commission has the authority to adopt accounting and reporting requirements solely to meet states' needs.[7] The Commission should reject these arguments as contrary to Section 11's statutory mandate and at odds with the Commission's prior decisions that it must find a federal need in order to retain existing accounting and reporting requirements.[8] Furthermore, Verizon observes that parties advocating the retention of existing rules have a substantial evidentiary burden to meet.[9]

In the comments which follow, Qwest addresses some of the more contentious issues in this proceeding and renews its request that the Commission take a "fresh look" at its accounting and reporting requirements and establish a standard for determining which requirements are "necessary" under Section 11 of the 1996 Act.

II. SECTION 11 REQUIRES THAT THE COMMISSION ELIMINATE ACCOUNTING AND REPORTING REQUIREMENTS THAT ARE "NO LONGER NECESSARY IN THE PUBLIC INTEREST."

AT&T and NASUCA argue that Section 11(b)'s mandate to eliminate accounting and reporting requirements that are "no longer necessary in the public interest" largely can be

[7] AT&T at 10; NASUCA at 4; RUS at 2; Wisconsin PSC at 19-21. NASUCA in an attempt to "hedge its bets" makes the bizarre argument that "[T]he need to provide a central source of information for use by the states is, in fact, an implicit federal need." *See* NASUCA at 4.

[8] *See* USTA at 5-6; SBC at 3-5; Verizon at 3; Qwest at 4-9.

[9] Verizon at 4-5.

circumvented by focusing on the language of Section 11(a) that directs the Commission to "determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers."[10] If their interpretation of Section 11 were adopted, it would lead to the perverse conclusion that the Commission could retain unnecessary accounting regulations if the Commission did not make an affirmative finding that "meaningful economic competition" exists. NASUCA makes this point very clearly:

> It is thus only when "meaningful economic competition" exists that the Commission is allowed to determine that an accounting requirement is unnecessary. The criterion for eliminating a regulation is not whether there is an identified federal need for any such regulation, as the Commission has maintained in the past.[11]

The Commission should reject AT&T and NASUCA's interpretation of Section 11's requirements as unreasonable.[12]

Such an approach would turn Section 11 on its head and leave many unnecessary accounting and reporting requirements in place simply because the Commission has not made an

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[10] *See* AT&T at 10-12; NASUCA at 6-7.

[11] NASUCA at 7. *Also see*, AT&T at 11. AT&T took a slightly different tact but the end result would be the same. AT&T asserts that: "Section 11 requires the Commission to repeal or modify rules only if two conditions are present: (1) the Commission finds that there exists 'meaningful economic competition' and (2) the Commission finds that 'as a result' of that 'meaningful economic competition' the existing regulation is 'no longer necessary in the public interest.'"

[12] Furthermore, the Commission already has found in its *Phase 2 Order* in the *2000 Biennial Review* that it need not make a finding that meaningful competition exists in order to make rule changes. *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd. 19911, 19921-22 ¶ 23 (2001)("*Phase 2 Order*").

affirmative finding that "meaningful economic competition" exists.[13] Clearly, this is not what Congress intended when it adopted Section 11 of the 1996 Act. Rather than presuming that all existing accounting and reporting requirements are necessary, Section 11 presumes -- just the opposite -- that existing rules should be repealed or modified unless the Commission finds that these requirements are "necessary in the public interest."

The Commission would be ignoring its statutory duty and performing a grave disservice if it fails to eliminate all accounting and reporting requirements that it no longer finds to be "necessary in the public interest" -- regardless of whether it makes a specific finding on the state of competition in a given market. One of the key purposes of the 1996 Act was to bring about as much deregulation of telecommunications as possible based on the extent of competition. Thus, even if the level of competition in a given market segment remains unchanged (or is not examined by the Commission), the Commission still has a statutory duty under Section 11 to eliminate all regulations that are no longer found to be necessary in the public interest. Imposing unnecessary regulations on one group of market participants (*i.e.*, the large ILECs) is inherently anticompetitive and contrary to both the goals and the specific language of the 1996 Act.

III. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO RETAIN OR ADOPT ACCOUNTING AND REPORTING REQUIREMENTS SOLELY TO MEET STATE NEEDS.

AT&T claims that Section 220 of the Act provides the Commission with discretion to adopt accounting and reporting requirements "that are used primarily -- or even exclusively -- by

[13] It should come as no surprise that AT&T contends that the Commission must conduct any such competitive inquiry at the lowest possible level of detail. "[…] the section 11 inquiry is a fact intensive task that will depend on the particular account being analyzed and the particular economic market that the data is used to regulate." AT&T at 11.

states."[14] This argument simply does not pass close legal scrutiny and should be rejected. USTA's argument that the Commission does not have the authority to adopt accounting and reporting requirements, or for that matter any other requirements solely to meet the needs of states, is much more compelling.[15]

As USTA points out, the Act specifically limits the Commission's jurisdiction to matters of interstate and foreign communications and prohibits the Commission from regulating intrastate service.[16] USTA argues that these specific statutory limitations (*i.e.*, Sections 151 and 152(b)) preempt general statutory provisions such as sections 220(a)(1) and (i) which may appear to give the Commission broad discretion to adopt state-specific accounting requirements.[17] Furthermore, as USTA points out, the Commission already has made a "specific" finding in its *Phase 2 Order* that there must be a federal need before it can impose an accounting or reporting requirement.[18] Not only does USTA have the better statutory argument, but "[b]eyond the matter of statutory construction, there is simply nothing in Section 220 that authorizes or directs the FCC to implement or maintain regulations solely, as a surrogate for state regulatory agencies, for the benefit of the states."[19] Qwest urges the Commission to end this debate by re-affirming that it (*i.e.*, the Commission) must find a federal need before it may adopt any accounting or reporting requirements.

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[14] AT&T at 3-4, 10. NASUCA makes a similar assertion without reference to any statutory support for its position. NASUCA at 4-6.

[15] USTA at 3-7. *Also see* SBC at 3-6; Verizon at 4-10.

[16] USTA at 4 citing 47 U.S.C. §§ 151 and 152(b).

[17] One of the cardinal principles of statutory construction is that specific statutes (and sections of statutes) preempt general statutes and general statutory language. *See* Sutherland Statutory Construction, Fourth Edition, C. Dallas Sands, Section 51.05 (1973).

[18] USTA at 5 citing *Phase 2 Order*, 16 FCC Rcd. at 19985 ¶ 207.

[19] USTA at 6.

IV. THE COMMISSION CANNOT OBTAIN AN ACCURATE ASSESSMENT OF COMPETITION IF IT LIMITS ACCOUNTING AND REPORTING REQUIREMENTS TO LARGE ILECS.

Both the Joint Conference and some commenters (*i.e.*, opponents of the large ILECs) argue that it is critical that the Commission's accounting and reporting requirements imposed on the large ILECs be expanded in order to provide a more accurate assessment of competition in telecommunications markets. They claim that without such information the Commission and state regulatory agencies will be unable to develop procompetitive policies. For example, AT&T states:

> Moreover, as the Commission and the states seek to minimize regulation and maximize competition in the telecommunications industry, they need sufficient information to develop procompetitive policies and to assess whether those policies are working.[20]

Qwest agrees with AT&T concerning the need for more competitive information -- but the way to get it is to collect information from all market participants, not just to burden one group of telecommunications carriers, the large ILECs, with even more expansive and expensive accounting and reporting requirements. That is the equivalent of trying to assess competition in the American automobile market by collecting data from General Motors, Ford and Chrysler but not from Toyota, Honda, Nissan, and others. Not only would such an approach provide no information on the overall size of the market and the market shares of other market participants (no matter how large they may be), it would inevitably lead to bad policy decisions.[21] Without

[20] AT&T at 6.

[21] For example, both the Commission and state regulatory agencies have difficulty accepting the fact that cellular telephones are a substitute for landline local exchange service. Most regulators continue to operate under the mistaken presumption that ILECs have monopoly power in their local exchanges despite the fact that ILEC service volumes continue to decline while cell phone use continues to grow at a rapid rate (there are almost 150 million cellular telephones currently in use in the United States). If cellular providers had been subject to accounting and reporting requirements similar to those of the large ILECs, the Commission would have had more than

information from all telecommunications providers, the Commission cannot possibly make the reasoned decisions required by the Act. Therefore, the Commission should require all telecommunications providers, providing more than a *de minimis* volume of service, to provide any information that the Commission finds to be "necessary" under Section 11.[22] Only in this way will the Commission be able to obtain an accurate assessment of the extent of competition in various telecommunications markets and sub-markets.

V. AT&T AND OTHER ILEC OPPONENTS FAIL TO ACKNOWLEDGE THAT LARGE AMOUNTS OF INFORMATION ARE AVAILABLE FROM OTHER SOURCES.

AT&T and other parties supporting retention or expansion of the Commission's accounting and reporting requirements do not even mention the fact that much of the information contained in these accounts and reports (or a close proxy for this information) is available from Securities and Exchange Commission ("SEC") reports or other reliable sources. If one were to believe AT&T's impassioned rhetoric,[23] no information would be available to regulate large ILECs but for the Commission's extensive accounting and reporting requirements.[24] This is simply not true.[25]

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enough information to conclude that most local exchange markets are highly competitive and to modify regulatory requirements to better accommodate competition.

[22] If the Commission eliminates all "unnecessary" accounting and reporting requirements as Qwest has suggested (and as Section 11 requires), the universal application of these requirements should not be particularly burdensome to telecommunications providers.

[23] For example, in addressing the purpose of regulatory accounting requirements AT&T grossly overstates the need for such regulation in a price cap environment: "Disaggregated and precisely-defined record-keeping requirements are necessary to protect consumers and competition against discrimination, cross-subsidization, and other market power abuse by dominant carriers, to allow the Commission to implement effectively the Act's universal service requirements, and to ensure that price cap and other regulation of interstate services protects consumers from unjust and unreasonable rates and practices." AT&T at 3.

[24] It is interesting to note how AT&T's position has changed from prior years when it was subject to the same reporting requirements as the large ILECs. For example, according to the Commission's Report and Order adopted in the *Revision of the Uniform System of Accounts for*

As AT&T well knows, Qwest and the other large ILECs are subject to significant regulation and structure under Generally Accepted Accounting Principles ("GAAP"), as is AT&T itself. Furthermore, large amounts of accounting and financial information are required to be filed with the SEC both quarterly and annually. Most of the Commission's existing accounting and reporting requirements are the product of another era -- when the large ILECs were subject to pervasive rate of return regulation in both state and federal jurisdictions. This is no longer the case. With the adoption of price cap regulation and the passage of the 1996 Act (including Section 11), it is difficult to justify the continued use of the Uniform System of Accounts ("USOA") when GAAP accounting is available. Thus, rather than simply reviewing the need for individual USOA accounts, the Commission should ask itself in its next biennial review whether the USOA is "necessary" in light of the availability of GAAP accounting data from SEC filings.

VI. CONCLUSION

Despite the failure of AT&T and other opponents to acknowledge it, Section 11 of the 1996 Act requires the Commission to repeal or modify any accounting or reporting requirements that it no longer finds to be "necessary in the public interest." Contrary to the claims of AT&T,

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Telephone Companies proceeding, CC Docket No. 84-469, FCC 85-581, 50 Fed. Reg. 48408, rel. Nov. 25, 1985, AT&T states that: 1) GAAP should be adopted for both accounting and ratemaking purposes (¶ 14); 2) both IXCs and regulated monopoly carriers should be permitted to adopt GAAP on a "flash cut" basis (¶ 16); and 3) the "adoption of GAAP into the USOA should take effect as soon as possible" (¶ 65).

[25] The availability of accounting and financial information from other sources such as the SEC should make it even less necessary for the Commission to gather similar information. This is even more so the case now that the Commission rarely uses large ILEC information for ratemaking purposes. It is ironic that the accounting and reporting requirements for small and mid-sized ILECs, some of whom are still subject to rate of return regulation, are much less burdensome.

NASUCA and others, the term "necessary in the public interest" in Section 11 is directed at federal needs, as the Commission has previously found.

The Joint Conference's Report and recommendations ignore the above points and focus on states' needs. As such, the Report is of no assistance to the Commission in fulfilling its responsibilities under Section 11 of the Act. Qwest urges the Commission, once again, to reject the Joint Conference's recommendations and initiate a new proceeding to take a "fresh look" at the Commission's existing accounting and reporting requirements.

Respectfully submitted,

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February 17, 2004

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY OF QWEST** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 02-269, CC Docket No. 00-199, CC Docket No. 80-286 and CC Docket No. 99-301, 2) served, via email on Tamara Preiss, Chief, Pricing Policy Division at tamara.preiss@fcc.gov, 3) served, via email on the FCC's duplicating contractor Qualex International, Inc. at qualex.int@aol.com, and served via First Class United States mail, postage prepaid, on the parties listed on the attached service list.

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